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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

No. 80-2060

IN THE MATTER OF JOHN D. RANDALL, SR.,
Petitioner.

On Petition for a Writ of Certiorari
To the Supreme Court of Iowa

PETITIONER'S REPLY MEMORANDUM

JOHN D. RANDALL, SR.
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Cedar Rapids, Iowa 52401
PRO SE

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John D. Randall, Sr., Pro Se Petitioner for a Writ of Certiorari from the action of the Panel of the Eighth Circuit disbarring Petitioner, for the reason that the record does show that there was any violation of Ethical Standards which would warrant disbarment from the Eighth Circuit Court of Appeals.

This Pro Se Petition for a Writ is now answered by Division III of Respondent's Brief In Opposition. The Respondent's attorneys are listed as Thomas J. Miller, Attorney General of Iowa; Mark E. Schantz, Solicitor of the State of Iowa; Lee Gaudineer, Hedo Zacherle, and Karen Shaff, attorneys of Des Moines, Iowa.

In addition to the attorneys listed above the other

attorneys in the Eighth Circuit were; James Reynolds, United States District Attorney for the Northern District of Iowa representing the United States District Court for the Northern District of Iowa and Roxanne Conlin United States District Attorney for the Southern District of Iowa representing the United States District Court for the Southern District of Iowa. There is no showing as to why these Counsel are not joining in the Response, only the statement of the Conclusion by Respondents present Counsel.

The Respondents seek to have this Court by the device of the denial of the Writ of Certiorari place the stamp of approval on the methods used by the Ethics Group of the Iowa State Bar Association and the Iowa Supreme Court. This was pointed out to the Eighth Circuit in Petitioner's Request that the Show Cause Order be Reheard En Banc. (Appendix in 80-2060, p. 100).

The Respondent further seeks to have this Court place its stamp of approval on the use of threats of Ethical sanctions in order to secure more favorable settlement in litigated matters.(Appendix 80-2060, p. 29-30)

The Respondents ignore the fact that Petitioner plead in his fifth defense the deceptions practiced by Mr. Gaudineer in not advising Respondent of the fact that there was a charge involving Conflict of Interest.(Appendix 80-

2060, p. 67-68)

The Respondent seeks to have the Writ of Certiorari denied. This would indicate that this Court is indifferent to tacticts used by Prosecutors for the Iowa Ethics Group to get their man.

The Justice Department and many of the Public Prosecutors are proclaiming their fight against "White Collar Crime". The record in this case discloses that the Petitioner was defrauded by Morningstar by not reporting any income received from the Hess 80. Mr. Morningstar admitted this. Morningstar gained $271,000.00 from the sale of this 80. He had had all of the expenses paid by Myers Farms, Inc., without the Petitioner's knowledge. The Petitioner believes that counting the payments made on behalf of Morningstar, of interest, insurance payments, seed, fertilizing, the cost of putting in the crops, and harvesting the crops, over the years Morningstar must have benefited by at least an additional $400,000.00. Thus his fraud benefited him by at least $700,000.00.(Exhibit J, p. 157, Appendix 80-2060) This was not mentioned by any Court. By denying the Writ, the Respondents are suggesting that this Court approves this white collar crime.

The argument by the attorneys for Respondents follows

their usual form. This was the method successfully used by Lee Gaudineer, Hedo Zacherle and Karen Shaff in No. 79-1416 in this Court, in the response (79-1416) the Petitioner stated, "Respondent, in its opposing brief in No. 79-1416, raises arguments based upon several erroneous assertions which convey false impressions and merit response".

In Respondent's Brief in opposition to Division III, the Respondents seek to obscure the point made by Petitioners that the rule with respect to "disciplining of attorneys shall be as prescribed in Rule 46 of the Federal Rules of Appellate Procedure". Rule 2(a) clearly provides that it is "cases and controversies" that may be heard by a Court or a Division thereof (Respondent's Appendix C, p.A21) This is not the Court as referred to in Rule 46 of the Federal Rules of Appellate Procedure.

While the argument of the Respondents, is clearly an appeal to prejudice, the Petitioner does deny that he in any way attacks any Court or a Judge thereof. Senior Judge Gibson is a highly qualified gentlemen. The fact that he was mislead by Counsel for Respondent does not cause Petitioner to condemn him. Judge Gibson certainly would not expect Counsel for the Ethics Group of Iowa to use the tactics which have been used to "get the Petitioner".

This is illustrated by the fact that Judge Gibson in commenting on the fact that Petitioner claimed that he was singled out for treatment because of his position mentioned alleged instances where the Ethics Group in Iowa had disciplined prominent Iowa lawyers. These various incidents were from the Brief of the Ethics Group in the Eighth Circuit. One of the instances mentioned was a professor at the University of Iowa Law School. This illustration was mentioned in the Brief of the Respondent before the Eighth Circuit. There was no citiation of the case and, thus, therefore this disciplinary sanction must have been from the secret files of the Ethics Committee.

The cases referred to by the Panel although not cited were committee on Professional Ethics vs. Bromwell(the Congressman) 221 NW 2d 777(Iowa 1974). Mr. Bromwell stipulated in writing that "He had willfully and knowingly failed to file United States and Iowa income tax returns for the calendar years 1965 through 1972, although required by law to file for each of those years". Mr. Bromwell was indicted in the United States District Court, plead guilty to one count and had been sentenced. Mr. Bromwell was suspended from practice and was given leave to apply for reinstatement in 18 months.(Disciplinary Rule 1-102)

Another case referred to by the Panel as involving a

former president of the Young Lawyers Section of the Iowa State Bar Association, your Petitioner believes was Committee on Professional Ethics vs. Darling 256 NW 2d 389(Iowa 1977). Mr. Darling willfully failed to file State income tax returns for the years 1969, 1971, 1972, 1974, and 1975. He also erroneously certified to the Iowa Client Security and Disciplinary Commission that the State returns had been duly filed. Mr. Darling was charged by a seperate County attorney's information for willful failure to file for each of those years and plead guilty to each of the charges. He was suspended. He was permitted to apply for reinstatement in 12 months.

The Respondent on page 15 of their Brief states, "In essence, the Petitioner is saying he did not understand that adherance to the principles of 'common honesty'***, prohibited his conduct".

Mr. Gaudineer and Mr. Zacherle who were of Counsel who prepared the Respondents Brief were one of a sub-committee of four who met at the office of Mr. Gamble, chairman of the Ethics Committee, October 12, 1977, and at that time participated in deceiving the Petitioner by not informing him that he was being charged with having a conflict of interest. Mr. Gaudineer and Mr. Zacherle also collaborated in drafting the Complaint against Petitioner

in two counts, this Complaint was sworn to by Mr. Gamble, the chairman of the Committee, October 18, 1977. One of the counts charged conflict of interest. Mr. Gaudineer visited the office of Petitioner early in November of 1977 and at that time did not inform the Petitioner that the Complaint had been drawn and sworn to and that he was being charged with conflict of interest.

Disciplinary Rules 1-102 states:

"A--A lawyer should not:

(4)Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation."

The Petitioner has pointed out the deceit which was practiced on him by the members of the subcommittee of the Ethics Committee before the Supreme Court of Iowa and the Federal Courts. He plead the deception of Mr. Gaudineer in his fifth defense to the Complaint(Appendix in Supreme Court of Iowa, p. 25). These charges have never been denied. Neither have any of these charges been mentioned in any of the opinions by any of the Judges.

The Petitioner was chairman of the Standing Committee of Professional Grievances of the American Bar Association in 1966. He would never have attempted to deceive or accused. It was his position and the position of the Committee, that an accused was entitled to be informed of all of the charges against him; and that he was presumed

innocent until proven guilty. We were all conscious of the charges made by the media against lawyers, but did not believe that an unfair or rigged hearing would enhance the standing of the Bar in the eyes of the public.

The Petitioner has set out the foregoing facts because he believes that the standards established by the Ethics Committee and Mr. Gaudineer and Mr. Zacherle relating to "Common honesty" as shown by their actions in his case is certainly not his standards of "common honesty".

Judge Gibson and the distinguished Panel of the Eighth Circuit were presented with a most difficult assignment. It was the responsibility of the Federal Court to make an independent de novo review of the record Sellings vs. Radford 243 US 46(1916), while the United States District Courts for the Northern and Southern Districts of Iowa had stated that each of the Courts had reviewed the record before the Supreme Court of Iowa, there were no facts stated which would reflect that such record had been examined by either of those Courts. Judge Gibson was furthe confronted with the contention of the Petitioner that he had never had his day in Court. The Petitioner requested that a Judge or Master from outside the State of Iowa having nothing to do with any of the proceedings be appointed for the purpose of conducting discovery.

If Petitioner were permitted to conduct discovery and the deceit and fraud which Petitioner charged were to be established, it would be most embarrasing to the United States District Courts for the Northern and Southern Districts of Iowa.

However, if an Opinion were written wherein the facts made by the Petitioner were considered and resolved, the Petitioner would not be able to have his claim reviewed by the United States Supreme Court.

The Opinion by the Panel of the Eighth Circuit used every fact claimed by the Respondent as though it were a verity. There was no mention of the deceit practiced by the Ethics Group. There was no mention of any controverting facts. One could not learn from the Opinion that there had been any facts produced by the Petitioner. The Opinion quotes as a fact from the testimony of Morningstar, a confessed perjurer, who the record showed had defrauded Petitioner. Large figures appear in the Opinion which are from the argument of the Ethics Group and are not supported by facts. There was no mention made of the fact that the Ethics Group had a greater burden than that of the Preponderance of evidence in Addington vs. Texas 411 US 718 60 L. Ed. 2d 323, 99 S. Ct. 1804(1979). There were no facts stated which the Court recognized as being proved

as required by the Addington case. It is clear that the proof in the case does not meet the standard for due process proof.

It is significant that in the notes to the Preamble and Preliminary Statement of the Code of Professional Responsibility there is a reference to Professional Responsibility: Report of Joint Conference 44 ABAJ 1159.(1958)

There is also in these notes a citation from Kingsland vs. Dorsey 338 US 318, 320, 94 L. Ed. 123, 126, 70 S. Ct. 123, 124-25(1949), reading:

> "An accused lawyer may expect that he will not be condemned out of a capricious self-righteousness or denied the essentials of a fair hearing."

A fair review of this record would certainly show that the Petitioner has been "condemned out of a capricious self-righteousness and was denied the essentials of a fair hearing".

Respectfully,

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